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COG OPERATING LLC
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APPLICATION OF ONCOR	§	
ELECTRIC DELIVERY CO, AEP	§	BEFORE THE
TEXAS INC. AND LCRA	§	
TRANSMISSION SERVICES	§	
CORPORATION TO AMEND	§	STATE OFFICE OF
THEIR CERTIFICATES OF	§	
CONVENIENCE AND	§	
NECESSITY FOR 345-KV	§	ADMINISTRATIVE
TRANSMISSION LINES IN	§	
PECOS, REEVES, AND WARD	§	
COUNTIES, TEXAS	§	HEARINGS

**INITIAL POST-HEARING BRIEF AND APPENDIX OF
INTERVENOR COG OPERATING LLC**

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QUESTIONS PRESENTED

1. Whether Route 325 Modified is the best alternative transmission line route, weighing the factors in Public Utility Regulatory Act (PURA) § 37.056(c) and 16 Tex. Admin. Code § 25.101 (b)(3)(B), because Route 325 Modified impacts less oil and gas development in the area, has one fewer habitable structure, greater than seven miles more paralleling of existing transmission lines, more length paralleling of existing rights-of-way, parallels less pipelines, has less length through commercial and industrial areas, and over four miles more length through rangeland pasture but costs more than Route 320 Modified?
2. Whether the Commission should approve Concho- and Oxy-requested modifications to minimize the effect of the project on existing and ongoing oil and gas development?
3. Whether the Commission also should approve post-approval flexibility language that allows Applicants to modify the approved route to the minimum extent necessary to avoid engineering constraints encountered during the design and construction of the project, limited to properties with (1) no habitable structures and (2) primarily used for mineral development?

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ALJ	Administrative law judge
CCN	Certificate of convenience and necessity
ERCOT	Electric Reliability Council of Texas
PUC	Public Utility Commission of Texas
PURA	Public Utility Regulatory Act
SOAH	State Office of Administrative Hearings
TAC	Texas Administrative Code
TPWD	Texas Parks and Wildlife Department

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**INITIAL POST-HEARING BRIEF AND APPENDIX OF
INTERVENOR COG OPERATING LLC**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COG Operating LLC (Concho)¹ timely files this Initial Post-Hearing Brief under SOAH Order No. 2.

STATEMENT OF THE CASE

Under the Public Utility Regulatory Act (PURA), an electric utility must obtain a certificate of convenience and necessity (CCN) from the Public Utility Commission of Texas (PUC or Commission) to install, operate, or extend electric utility service to the public.² To approve an application to obtain or amend a CCN, the PUC must find the proposed CCN is “necessary for the service, accommodation, convenience, or safety of the public.”³ Texas statutes⁴ and PUC rules⁵ govern Commission approval of CCN applications. They set forth the

¹ Concho Ex. 1 at 3. “COG Operating LLC operates as a wholly-owned subsidiary of Concho Resources Inc.”

² Tex. Util. Code Ann. (PURA) 37.051.

³ *Id.* § 37.056(a).

⁴ See Appendix 1. PURA § 37.056(c).

⁵ See Appendix 2. 16 TAC § 25.101(b)(3)(B).

criteria according to which the PUC is to make its determination and include several factors that the Commission must consider when choosing a route for a transmission line.

Oncor Electric Delivery Company LLC and AEP Texas Inc. (collectively, the Applicants) applied with the Public Utility Commission of Texas (PUC or Commission) to amend their CCNs for a proposed double-circuit 345 kilovolt transmission line in Pecos, Reeves, and Ward Counties, Texas (the project or proposed project). The statute and the Commission's rules governing CCN applications require the Commission to consider several factors when choosing a route for a transmission line. The Commission's Order of Referral to the State Office of Administrative Hearings (SOAH) identified several issues in this case.⁶

The proposed project is designated as the Sand Lake-Solstice Project. The facilities include construction of a new 345-kV double circuit transmission line built on lattice steel tower structures, extending from Oncor's Sand Lake Switch in Ward County to AEP Texas Solstice Switch in Pecos County.

The estimated cost for the project ranges from \$98,220,000 to \$126,903,000. The Applicants proposed 29 alternate route segments, which were selected from among 408 routes Halff developed, and is estimated to be approximately 44.5 to 58.7 miles in length, depending on the approved route. The Commission may approve, however, any route in the application or any combination of noticed route links.

PROCEDURAL HISTORY

Concho supports the Applicants' proposed procedural history.⁷

SUMMARY OF ARGUMENT

The evidence supports three decisions: (1) Route 325 Modified best meets the routing criteria in PURA and the Commission's rules; (2) several links should

⁶ Order of Referral at 3-6.

⁷ Joint Brief at 3-5.

be modified to avoid interference with existing and ongoing oil and gas development; and (3) the Commission should grant the Applicants post-approval flexibility to accommodate oil and gas development-related engineering constraints that may arise before construction of the project.

Compared to Route 320 Modified, Route 325 Modified impacts less oil and gas development, has one fewer habitable structure, greater than seven miles more paralleling existing transmission lines, more length paralleling existing rights-of-way, parallels 0.8 miles less pipelines, less length through commercial and industrial areas, and has 4.393 miles more length through rangeland pasture. Table 1 lists this data for both alternative routes.

	Route 325 Modified	Route 320 Modified
Cost	\$145,596,000	\$126,725,000
Habitable structures	37	38
Length of route	284,873	244,717
Length of route parallel to existing electric transmission lines	37,876	0
Length of route parallel to existing public roads/highways	10,467	15,823
Length parallel to pipelines	747	5,066
Length parallel to apparent property boundaries	84,203	96,491
Total length of route parallel to existing compatible rights-of-way	122,544	105,916
Length through commercial/industrial areas	9,840	10,779
Length across rangeland pasture	237,890	214,695
Better avoids oil and gas development	Yes	No

Table 1

Concho and Oxy each expressed a strong preference to avoid the central routes, like Route 320 Modified, for western Route 325 Modified that avoids significant existing and ongoing oil and gas developments in the study area. Although Route 325 Modified costs more than Route 320 Modified, avoiding the central routes in the study area in favor of western Route 325 Modified meets the Commission's requirement to moderate the effect of the project on the affected community. The public benefit outweighs the increased cost.

The driving force behind the need for this project is oil and gas development. To better serve this goal, the Commission should ensure it limits the impact on oil and gas production by avoiding the fields and oil and gas developments that create the need for the transmission line project and fuels the local and Texas economies. Concho and Oxy identified several locations where Oncor's and AEP's proposed link locations interfere with existing and ongoing oil and gas development. Concho and Oxy proposed modifications to mitigate the effect on their operations. Concho contacted surface landowners to obtain consent for modifications on Links F3, K11, and J7.

Oil and gas development moves quickly in the study area and new wells can be approved and begun in a matter of weeks. Oncor and AEP need post-approval flexibility to modify the approved route to the minimum extent necessary to avoid engineering constraints encountered during the design and construction of the project, limited to properties with (1) no habitable structures and (2) primarily used for mineral development.

ARGUMENT

I. Introduction

Concho is an independent oil and natural gas company engaged in the acquisition, development, exploration and production of oil and natural gas properties. It operates oil and gas properties in the New Mexico Shelf, the Delaware Basin, and the Midland Basin. Concho's operations are primarily focused in the Permian Basin of southeast New Mexico and West Texas. The

Delaware Basin is a legacy area for Concho historically developed through vertical wells. Today, Concho is developing its Texas Delaware Basin positions using horizontal drilling, multiwell project development, and advanced completion techniques.⁸

The project may affect several of Concho's existing oil and gas wells and ongoing development in the study area.⁹ The Commission should consider those existing wells and ongoing development an engineering constraint that must be accommodated for economic, health, and safety reasons.¹⁰

The best way to avoid those constraints is to approve Route 325 Modified, even though it is more expensive than the Applicants' recommended Route 320. Oncor witness Perkins testified Route 325 Modified "is another attractive route the Commission should strongly consider."¹¹ Whether the Commission approves Route 325 or Route 320, it should approve Concho- and Oxy-requested modifications to minimize the effect of the project on oil and gas development. The Commission also should approve post-approval flexibility language that addresses unknown engineering constraints about which the Applicants become aware after approval of the project.

II. Procedural history

Concho supports the Joint Applicants' proposed procedural history in their Joint Brief on Uncontested Issues Regarding Sand Lake-Solstice Project.¹²

III. Jurisdiction, notice, and deadline for decision

Jurisdiction and notice of the application are uncontested issues. Concho supports the Joint Applicants' proposed jurisdiction and notice provisions.¹³

⁸ Concho Ex. 1 at 3-4.

⁹ Concho Ex. 3 illustrates Concho's significant development in the south-central and north-central parts of the study area.

¹⁰ Concho Ex. 1 at 5.

¹¹ Oncor/AEPTX Ex. 13 at 4.

¹² Joint Brief on Uncontested Issues Regarding the Sand Lake - Solstice Project at 3-6. (Feb. 12, 2019).

¹³ *Id.* at 5-6.

Concho agrees Applicants complied with 16 TAC § 22.52(a)(1)-(4). The deadline for decision is May 28, 2019.¹⁴

IV. Order of referral and preliminary order: Issues to be addressed

The testimony presented and the hearing on the merits focused on the Applicants' recommended route, Route 320, Staff's recommended route, Route 41, Concho and Oxy's preferred route, Route 325 Modified, and Concho's and Oxy's modifications to various routes to accommodate oil and gas development affected by various segments. Route 325 Modified is the route that best meets the requirements of PURA and the Commission's rules.

A. Application

***Issue No. 1.** Is Oncor Electric Delivery Company LLC and AEP Texas, Inc.'s application to amend their respective CCNs adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation?*

Concho agrees the Applicants satisfied Issue No. 1.

B. Need

***Issue No. 2.** Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition,*

a) How does the proposed facility support the reliability and adequacy of the interconnected transmission system?

b) Does the proposed facility facilitate robust wholesale competition?

c) What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed facility?

d) Is the proposed facility needed to interconnect a new transmission service customer?

***Issue No. 3.** Is the transmission project the better option to meet this need when compared to employing distribution facilities? If Oncor Electric Delivery Company LLC and AEP Texas, Inc. [are] not subject to the unbundling*

¹⁴ SOAH Order No. 2 at 5.

requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?

The parties entered into a unanimous stipulation agreeing the project is necessary for the service, accommodation, convenience and safety of the public.¹⁵ Concho supports a finding the Applicants satisfied Issue Nos. 2 and 3.

C. Route

Issue No. 4. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?

Route 325 Modified best meets the requirements of PURA and the Commission's rules. Compared to Route 320 Modified, Route 325 Modified impacts less oil and gas development, has one fewer habitable structure, greater than seven miles more paralleling existing transmission lines, more length paralleling existing rights-of-way, parallels less pipelines, less length through commercial and industrial areas, and has over four miles more length through rangeland pasture. Concho and Oxy each expressed a strong preference to avoid the central routes, like Route 320 Modified, for western Route 325 that avoids significant existing and ongoing oil and gas developments in the study area.

1. Routing criteria under PURA § 37.056(c)(4)

PURA requires the Commission to consider the effect of its decision on community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement of service or lowering of costs to consumers.¹⁶ The Commission's decision often is difficult with several conflicting factors. The Third Court of Appeals recognized this difficulty when it stated:

To implement in particular circumstances such broadly stated legislative objectives and standards, the Commission must necessarily decide what they mean in those circumstances; and

¹⁵ Unanimous Stipulation Concerning Need for the Proposed Projects (Feb. 19, 2019).

¹⁶ PURA § 37.056(c)(4).

because some of them obviously compete *inter se*, the agency may in some cases be required to adjust or accommodate the competing policies and interests involved.... None of the statutory factors is intended to be absolute in the sense that any one shall prevail in all possible circumstances. In making these sometimes delicate accommodations, the agency is required to exercise its “expertise” to further the overall public interest.¹⁷

The *Texland* court stated these “factors” are stated in the broadest possible terms. They are expressions of the Legislature’s policy and are legislative standards guiding the Commission in its administration of the certificate process.¹⁸

Community values

The term “community values” is not formally defined by statute or in the Commission’s rules. The Commission has viewed the term “community values” as “a shared appreciation of an area or other natural resource by members of a national, regional, or local community.”¹⁹ Commission decisions also define adverse effects upon community values as “those aspects of a proposed project that would significantly alter the use, enjoyment, or intrinsic value attached to an important area or resource by a community.”²⁰

Most of the study area consists of rural, undeveloped land used primarily or oil and gas production; livestock grazing; and/or irrigated crop production.²¹ In the Delaware Basin where the Applicants will construct this project, oil and gas development is important. Oil and gas production also is important to the State of Texas because it collects Severance Taxes from companies like Concho and Oxy.

¹⁷ *Hammack v. Public Utility Comm’n of Texas*, 131 S.W.3d 713, 723 (emphasis in original) (Tex. App.-Austin 2004, no pet.) quoting *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.).

¹⁸ *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.).

¹⁹ Oncor/AEPTX Ex. 1, Application Environmental Assessment (EA).

²⁰ *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Denton County*, Docket No. 44060, Order at FoF 29 (June 13, 2016). See also, *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for a 345-kilovolt Double-Circuit Line in Caldwell, Guadalupe, Hays, Travis and Williamson Counties, Texas*, Docket No. 33978, Order at FoF 118 (Oct. 10, 2008).

²¹ Oncor/AEPTX Ex. 1, Environmental Assessment at 3-70.

Oil and gas development is an important contributor to the local economies in West Texas–Concho alone has 1,100 employees. Oil and gas workers buy homes or rent housing, they purchase fuel for their vehicles, groceries, and other local retail products, and contribute to the local economies.

Oil and gas development is an important source of income for mineral rights owners, providing income for land otherwise likely not so valuable without oil and gas production.

Oil and gas development is not just a community value, it is the lifeblood of the Permian Basin community. The best route to accommodate the important resource in the community is Route 325 Modified.

Structures: Transmitters, airports, airstrips, and irrigation systems

Not addressed.

Parks and recreational areas

The Commission’s CCN application requires applicants to “list all parks and recreation areas owned by a governmental body or an organized group, club, or church and located within 1,000 feet of the centerline of the route.”²² The application also requires the applicant to “[i]dentify the owner of the park or recreational area (public agency, church, club, etc.).”²³

There are no parks or recreational areas within 1,000 feet of the centerline of the proposed alternative routes.²⁴ Because the data for any route does not differ from any other route, parks and recreational areas do not provide a basis to differentiate between the alternative routes.

Historical, cultural, and aesthetic values

Not addressed.

²² *Id.* Application, Q. 26.

²³ *Id.*

²⁴ Staff Ex. 1 at 21.

Environmental integrity

Staff witness Bautista testified the proposed project is expected to cause only short-term effects to water, soil, and ecological resources during the initial construction phase and the range of ecological impacts among the routes is relatively small.²⁵

Probable improvement of service or lowering of costs to consumers

The project will cause probable improvement of service to consumers by increasing the reliability of the transmission grid and its ability to support continued load growth.

PURA § 37.056(c)(4) criteria summary

PURA requires the Commission to consider the effect of its decision on community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement¹⁷ of service or lowering of costs to consumers.²⁶

2. Routing criteria under 16 Tex. Admin. Code § 25.101(b)(3)(B)

Besides the statutory requirements in PURA discussed above, the Commission identified several factors it is to consider in deciding CCN applications. Specifically, Commission rule 25.101 provides that, considering the PURA criteria, engineering constraints, and costs, the line should be routed to the extent reasonable to moderate the impact on the affected community and landowners, unless grid reliability and security dictate otherwise. The rule requires the Commission consider: (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines; (ii) whether the routes parallel existing

²⁵ *Id.* 1 at 24.

²⁶ PURA § 37.056(c)(4).

compatible rights-of-way; (iii) whether the routes parallel property lines or other natural or cultural features; and (iv) whether the routes conform with the policy of prudent avoidance.

The Austin Court of Appeals stated the plain language of the rule grants the Commission authority to consider and weigh a variety of factors with the criteria in PURA § 37.056 in determining the most reasonable route for a transmission line. No one factor controls or is dispositive, but the Commission will consider the factors and their impact on landowners to the extent reasonable.

Engineering constraints

The Applicants identified no engineering constraints they could not resolve during the design and construction phase following approval of the project. From an engineering perspective, all the routes are feasible.²⁷

Concho provided evidence of its existing wells, proven, undeveloped wells, contingent wells, probable wells, and possible wells.²⁸ Construction of the transmission line project could impose economic costs on Concho if it cannot develop or properly maintain oil wells and related production infrastructure. Many of Concho's mineral leases have continuous development clauses that require performance dates. Drill rigs are scheduled around the performance dates. Should transmission line construction delay or prevent Concho from meeting these performance dates, severe economic costs could be imposed on Concho.²⁹

Concho's rebuttal testimony explained in depth its concerns about proposed Route 328 on its Big Chief field.³⁰ Concho's concerns about the proximity of the transmission line to existing oil wells and health and safety concerns for Concho's and Oncor/AEP's personnel.³¹ Those health and safety

²⁷ Oncor/AEPTX Ex. 13, Perkins Rebuttal at 8.

²⁸ Concho Ex. 1 at 10, referencing confidential Concho Ex. 1-1.

²⁹ *Id.*

³⁰ Concho Ex. 2 at 4-8.

³¹ *Id.* at 6.

concerns about the proximity of the transmission line to oil and gas wells and facilities apply to all of Concho's operations.³²

Mr. Lowery testified that "[i]f the Commission approves Route 325 Modified, the project will avoid active development in the study area and minimize the need for modifications to accommodate oil and gas development in the central area"³³ he expects will pose new problems before Oncor and AEP begin construction of this project. Route 325 Modified least interferes with active oil and gas development in the study area.³⁴

Costs

The Commission has noted it has emphasized two factors in deciding the routing of transmission lines: the cost of the line and its impact on habitable structures.³⁵ The Applicants prepared cost estimates for each of the filed routes.³⁶ To calculate the costs of Route 325 Modified and Route 320 Modified, one must add the original estimated costs of Route 325 (\$144,093,000) and Route 320 (\$125,931,000) to the costs of Concho- and Oxy-requested modifications. The range of estimated project costs is \$125,931,000 to \$154,614,000. The Applicants estimate the cost of Route 325 Modified as \$145,596,000³⁷ and the cost of Route 320 Modified as \$126,725,000.³⁸

³² *Id.* at 7.

³³ *Id.* at 9.

³⁴ *Id.*

³⁵ *Application of TXU Delivery Company to Amend a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line within Jack, Wise and Benton Counties, Texas*, Docket No. 30168, Final Order at 2. (Nov. 7, 2005)

³⁶ Staff Ex. 1 at 25.

³⁷ A-B2-B3-C2-D2-F3-G4-G51-I2-J1-J7-L1-Z; \$144,090,000 + \$906,000 (C2) + \$0 (F3/G4/G51/G52) + \$600,000 (J1/J7) = \$145,596,000.

³⁸ A-B2-B3-C2-D1-E1-F1-I1-K11-K12-L2-Z; \$125,931,000 + \$906,000 (C2) - \$180,000 (E1/F1) + \$68,000 (K11) = \$126,725,000.

16 TAC 25.101(b)(3)(B)(i)-(iv) criteria

The Commission's rule requires it to consider the PURA criteria, and, considering those criteria, engineering constraints, and costs, then the route shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.³⁹ The Commission must consider these factors unless there is an agreed route among the utility, landowners whose property is crossed by the proposed line, and owners of land with a habitable structure within 300 or 500 feet of the centerline of the project.

- (i) Use of existing compatible rights-of-way
- (ii) Paralleling existing rights-of-way
- (iii) Paralleling property lines or other natural or cultural features
- (iv) Conform with the policy of prudent avoidance.⁴⁰

Use of compatible rights-of-way

The Commission's rule requires it to consider whether the routes utilize existing compatible rights-of-way.⁴¹ Here, no route *utilizes* existing compatible rights-of-way.

Paralleling existing compatible rights-of-way, including property lines or other natural or cultural features

Another consideration is whether the routes parallel existing compatible rights-of-way.⁴² Several routes *parallel* existing, compatible rights-of-way. Table 2 includes five of those data points.

³⁹ 16 TAC 25.101(b)(3)(B)(iv).

⁴⁰ 16 TAC 25.101(b)(3)(B).

⁴¹ 16 TAC 25.101(b)(3)(B)(i).

⁴² 16 TAC 25.101(b)(3)(B)(iii).

	Route 325 Modified	Route 320 Modified
Length of route parallel to existing electric transmission lines	37,876	0
Length of route parallel to existing public roads/highways	10,467	15,823
Length parallel to pipelines	747	5,066
Length parallel to apparent property boundaries	84,203	96,491
Total length of route parallel to existing compatible rights-of-way	122,544	105,916

Table 2

Conformance with the Commission's policy of prudent avoidance

The final consideration in the Commission's rule is whether the routes conform with the policy of prudent avoidance.⁴³ The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."⁴⁴ Prudent avoidance also considers what can be done in different settings, such as rural versus urban areas, where routing options and the opportunities to make routing adjustments differ. This does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives must be considered.⁴⁵

Habitable structures were a focus of the hearing. Commission Staff witness Bautista based his recommendation of Route 41 on the number of habitable structures on Route 320 (38) compared to the number of habitable structures on Route 41 (3). Halff designated 34 of more habitable structures as mobile units.

⁴³ 16 TAC 25.101(b)(3)(B)(iv).

⁴⁴ 16 TAC § 25.101(a)(4).

⁴⁵ *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed EC Mornhinweg to Parkway 138-kV Transmission Line in Comal and Guadalupe Counties*, Docket No. 40684, Order at FoF 84 (Jun. 19, 2013).

Applicants' witness Perkins testified those mobile units "have wheels on them, they have hitches, there's no utilities running to these units."⁴⁶ Ms. Perkins testified complying with the Commission's prudent avoidance policy is more than just a habitable structure count.⁴⁷ She affirmed Route 325 Modified has one fewer habitable structure than Route 320 Modified.⁴⁸ She also affirmed the filed routes comply with the policy of prudent avoidance.⁴⁹

Route 41 costs \$1.6 million more than Route 320. Mr. Bautista's improper use of the counting of habitable structures as the basis for his recommendation of Route 41 does not support the increased expenditure of \$1.6 million. Route 325 Modified has one habitable structure fewer than Route 320 Modified.

Moderation of impact of affected community and landowners

The Commission's rule does not support exclusive reliance on data, the rule requires the Commission to consider statutory criteria, engineering constraints, and costs, then the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.⁵⁰ In approving a route, the Commission must moderate the impact on the affected community.

Concho provided detailed maps showing its existing and ongoing development. Concho also explained the transmission line project may require moving surface locations of drill wells to less desirable areas resulting in reduced productivity or higher investment.⁵¹ Because of its concerns, Concho proposes a minimum distance of 300 feet from its wells and other facilities.⁵²

There are not competing interests in the community that argue for one route over another. No party exposes Route 325 Modified, which avoids interfering

⁴⁶ Tr. at 64:15-19.

⁴⁷ Tr. at 67:11-16.

⁴⁸ Tr. at 49:5-8.

⁴⁹ Tr. at 67:20-22.

⁵⁰ 16 TAC 25.101(b)(3)(B).

⁵¹ Concho Ex. 1 at 8.

⁵² *Id.* at 9.

with Concho's and Oxy's oil and gas fields in the community. Approval of Route 325 Modified will moderate the impact on the community, including the State of Texas, active oil and gas developers that contribute to the local economy, and mineral rights owners who look to the Commission to minimize the effect of this project on their rights.

Summary of 16 TAC § 25.101(b)(3)(B) criteria

Landowners did not intervene and participate in the way common in other CCN applications. Active parties included Concho and Oxy, oil and gas producers, and Plains Pipeline. Concho and Oxy witnesses provided extensive evidence on the impact of the project on their existing and ongoing oil and gas fields in the community. The witnesses expressed concern about the effect of the construction and operation of the transmission line on their oil and gas operations. Concho and Oxy witnesses expressed a strong preference to avoid oil and gas fields in the central part of the study area by approving a western route. Oncor witness Perkins confirmed one advantage of Route 325 Modified is the Route 325 Modified corridor is not as dense in oil and gas development as in the center of the study area where Route 320 is traversing.⁵³ The best way to moderate the project's impact on oil and gas production of Concho is approval of Route 325 Modified.

Alternative routes

Issue No. 5. Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?

Concho and Oxy requested modifications to have a less negative effect on their oil and gas operations⁵⁴ and address Concho's safety concerns. The Applicants sponsored rebuttal testimony by Mr. Marusek that illustrated the

⁵³ Tr. at 48:8-16.

⁵⁴ See Concho Ex. 1 at 11-16 and Concho Ex. 2. See also Oxy Ex. 2 and Oxy Ex. 3.

modifications⁵⁵ and Mr. Peppard that listed cost estimates for the modifications.⁵⁶ Ms. Perkins testified that, if Concho and Oxy obtain consent for the modifications from affected landowners, Oncor is not opposed to the modifications.⁵⁷

Link F3

As proposed, Link F3 will cross near an existing Concho Angler field well and compromise future project locations. Rerouting the transmission line will avoid the existing facility and minimize the effect on the future development in that field. The blue line on Figure 2 below illustrates the consent line worked out between Concho, Oncor, and AEP. The yellow dashed and dotted line is the original location Oncor and AEP proposed for the link.⁵⁸

⁵⁵ Oncor/AEPTX Ex. 11, Marusek rebuttal at 3-5.

⁵⁶ Oncor/AEPTX Ex. 12, Peppard rebuttal at 11-12.

⁵⁷ Tr. at 78:1-5.

⁵⁸ Tr. at 75:12-16.

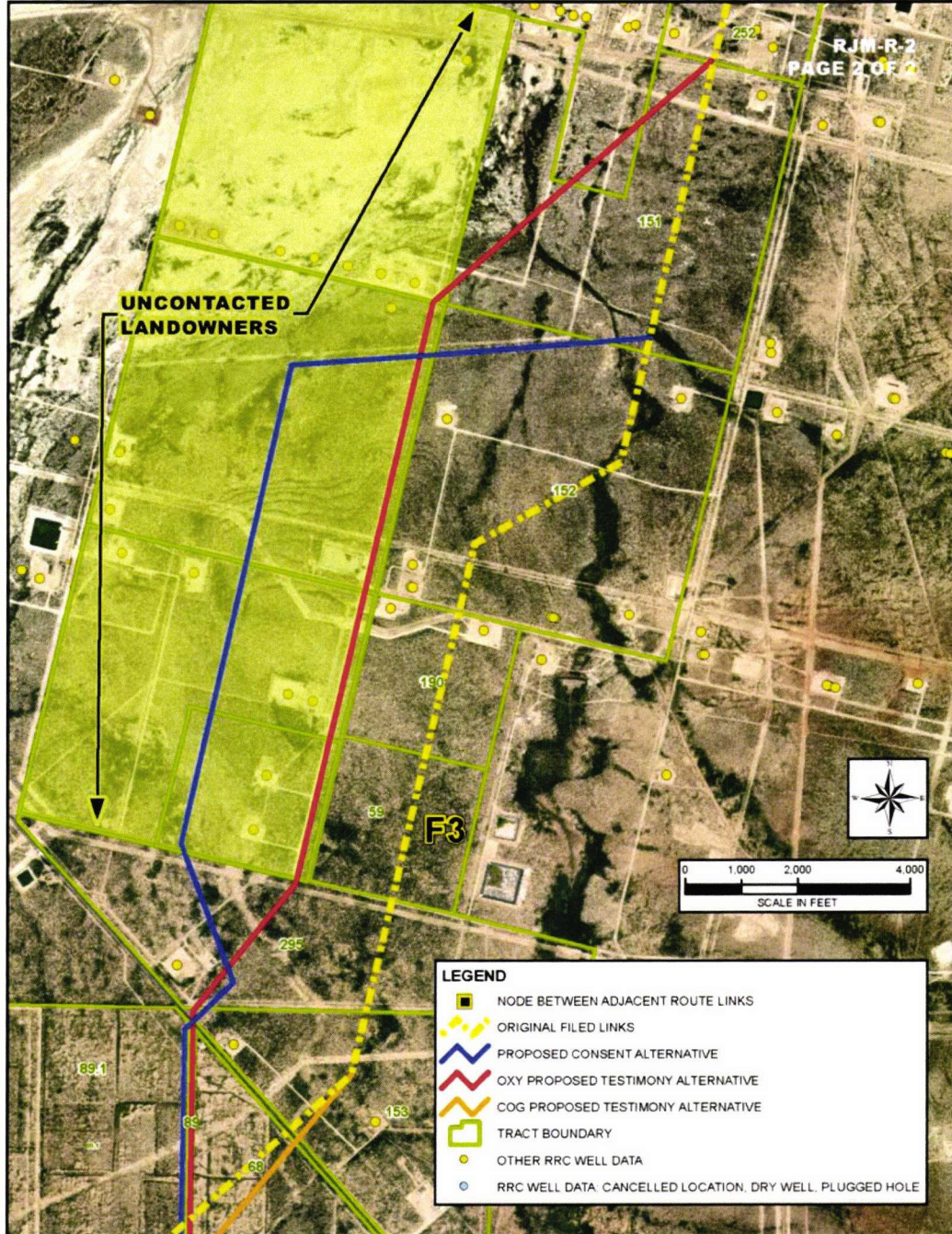


Figure 1

Link K11

During Concho's collaboration with Oxy, the companies agreed to support Route 325 Modified, which best avoids the active oil and gas fields in the study

area. Concho's requested modification for that route is on Link K11.⁵⁹ The Link K11 minor modifications will avoid existing Concho wells.⁶⁰ Concho, Oxy, Oncor, and AEP met to discuss proposed modifications.⁶¹ The blue line on Figure 2 below illustrates the consent line worked out between Concho, Oncor, and AEP.

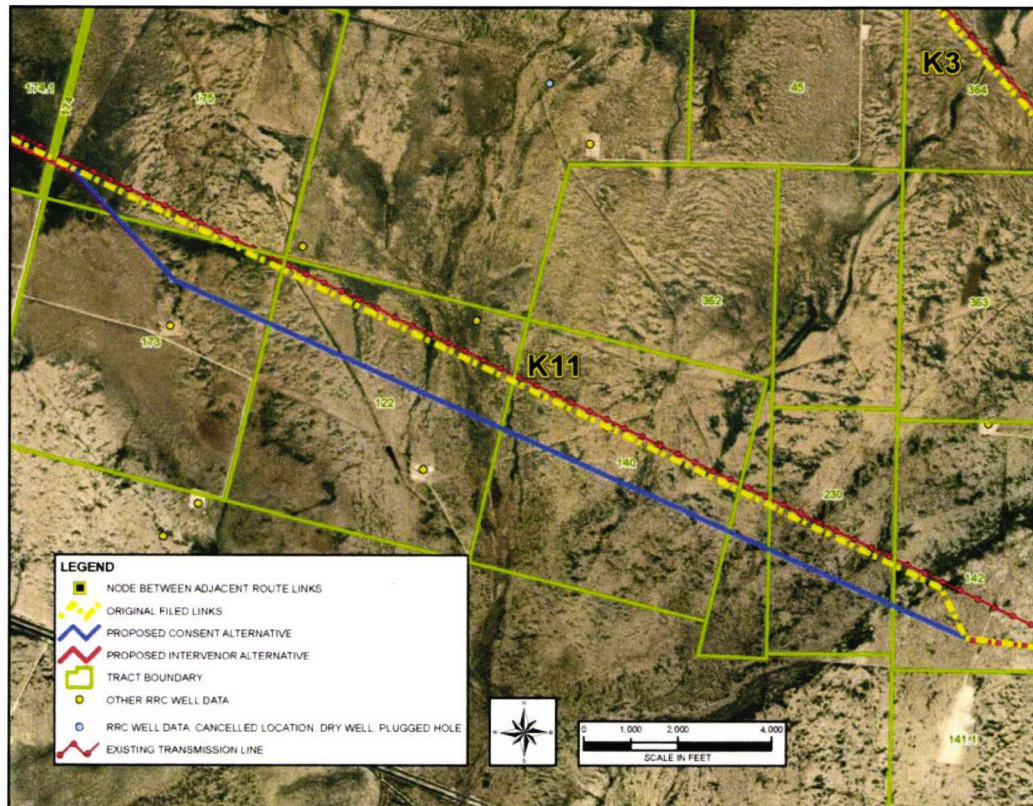


Figure 2

Link J7

Link J7 is part of Applicants recommended Route 320 and Staff's recommended Route 41. Link J7 may affect Concho's Paradox offset locations, so Concho suggested a slight reroute pushing the transmission line east. Instead of angling northwest in Section 58, Concho proposed continuing due north to avoid Concho's well locations. Once the line enters Section 139, Concho proposed the

⁵⁹ Concho Ex. 2 at 8-9.

⁶⁰ *Id.*

⁶¹ Tr. at 76:15-18.

link angle northwest to the originally-proposed J7 link. Through the collaborative process with Concho, Oxy, Oncor, and AEP, the parties developed a proposed consent line. The proposed consent line is shown in blue on Figure 3 below.

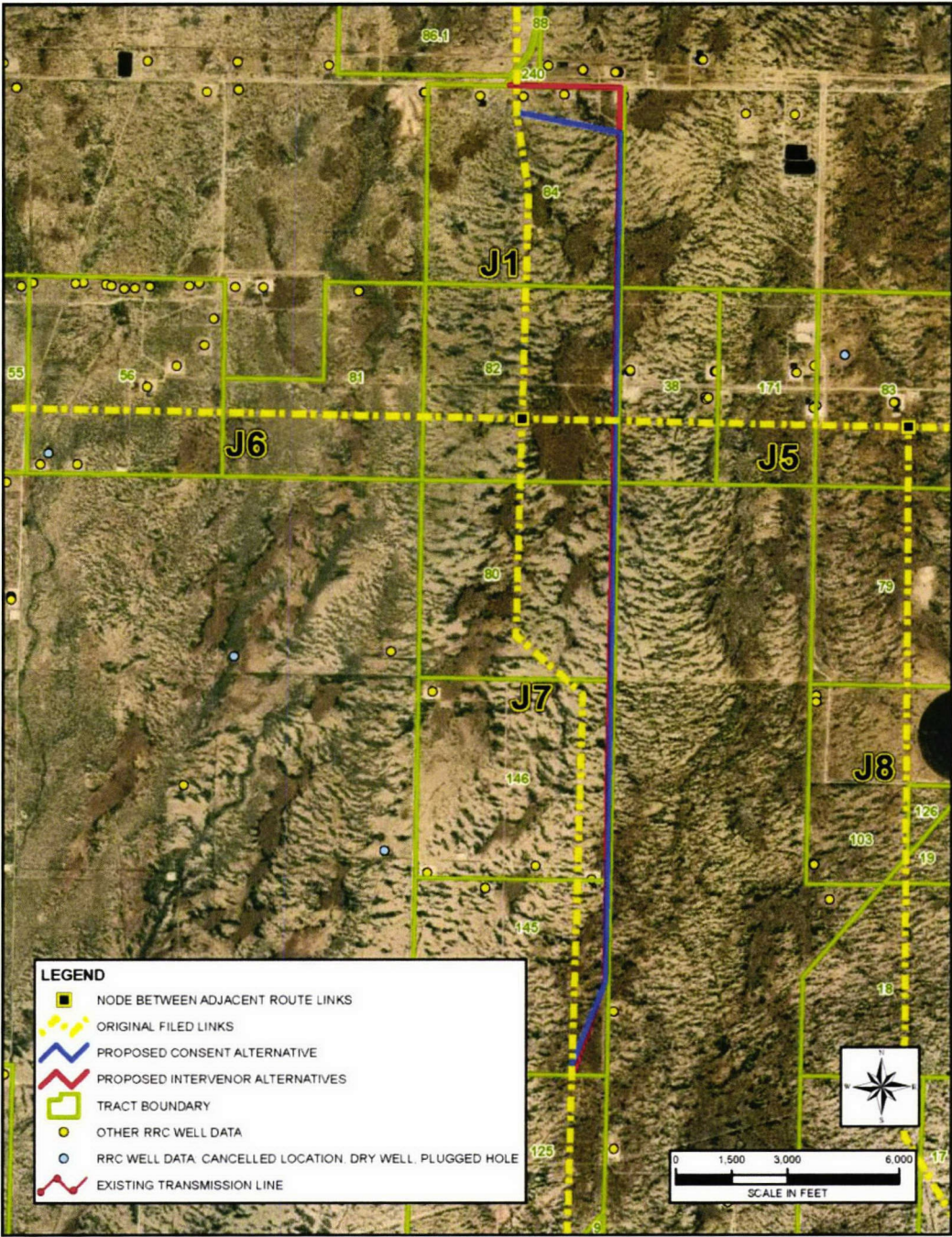


Figure 3

Landowner consents

Concho identified the surface owners affected by the K11 and J7 modifications. Concho provided surface owners and their counsel consent forms that Concho will file in this docket. To date, Concho has made good progress and foresees no critical concerns about obtaining landowner consents in a timely manner.

Landowner contributions

***Issue No. 6.** If alternative routes or facility configurations are considered due to individual landowner preference:*

- a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?*
- b) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?*

Concho has worked with Oncor, AEP, and Oxy to determine how the companies can mitigate the effect of the proposed transmission lines on Concho and Oxy. Concho proposed reasonable modifications to mitigate the impact of the transmission lines on its oil and gas operations in the study area. Concho expects its requested modifications will reduce costs associated with construction of the project in ways that affect Concho's oil and gas wells and other facilities. The modifications do not eliminate the burden on Concho of the transmission line, they mitigate them. By proposing its requested modifications, Concho is contributing to an ultimate reduction in the costs of this project because the modifications will reduce or eliminate engineering constraints associated with its oil and gas operations. Concho is unaware of other parties that committed to costs associated with the modifications for their properties.

Concho's requested modifications, for which it is expending effort, funds, and other resources to support, will not diminish the electric efficiency of the line or reliability. It is more likely modifications mitigating the effect on the oil and gas facilities will support reliability of the project.

D. Texas Parks and Wildlife Department

***Issue No. 7.** On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:*

- a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?*
- b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?*
- c) What other disposition, if any, should be made of any recommendations or comments?*
- d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.*

TPWD's comment letter recommends construction practices, which the Applicants and PUC Staff address in their testimony and briefs. TPWD recommended Route 324 because it appears to best minimize impacts to natural resources. No other party recommends Route 324 and it was not a focus of the hearing. The Commission should meet its obligation to respond to TPWD's recommendations and comments, but it should not approve Route 324.

E. Other issues

***Issue No. 8.** Are the circumstances for this line such that the seven-year limit discussed in section III of this order should be changed?*

Applicants represent the default seven-year limit should be sufficient for the Applicants to safely and reliably construct and energize the line.⁶² Concho does not support extending the seven-year limit.

Post-approval flexibility

Concho's witness testified "development in this study area is fast-moving and changing as markets evolve and oil and gas producers learn more about their

⁶² Joint Brief at 16.

development areas.”⁶³ “Because development in the study area is progressing quickly, the location of facilities along whatever route the Commission approves likely will differ from what the applicants considered when they prepared their application.”⁶⁴ New constraints likely will arise before (and even during) the time Oncor and AEP construct this project.⁶⁵

Mr. Lowery testified Concho, Oxy, Oncor, and AEP worked to minimize the effect of the project on an important resource in the study area. When one party identified a modification to avoid existing or ongoing development, that modification often resulted in a new conflict with another party’s development or other engineering constraints.⁶⁶

Mr. Lowery testified things do move quickly.⁶⁷ Moving a well in progress of drilling would involve major expense and can also affect future development of the field.⁶⁸ Mr. Lowery explained an exhibit⁶⁹ that used aerial photographs to illustrate accelerating development in a Concho field from 2013-2019.⁷⁰

Mr. Peppard testified for the Applicants on this issue. “Every day, new wells are being drilled and new pipelines are being built throughout this area. Given the fast pace of development, it is very likely that unanticipated obstacles will be encountered during the post-certification process for the Proposed Transmission Line Project—perhaps several times on a given route.”⁷¹

Concho supports the Commission giving Oncor and AEP additional flexibility to modify the approved route so it can be constructed in a safe and reliable manner.

⁶³ Concho Ex. 2 at 13.

⁶⁴ Concho Ex. 1 at 6.

⁶⁵ *Id.*

⁶⁶ Concho Ex. 2 at 9.

⁶⁷ Tr. at 102:21-22.

⁶⁸ Tr. at 102:22-103:1.

⁶⁹ Concho Ex. 4.

⁷⁰ Tr. at 105:3-107:16.

⁷¹ Oncor/AEPTX Ex. 12 Peppard Rebuttal at 5.

CONCLUSION

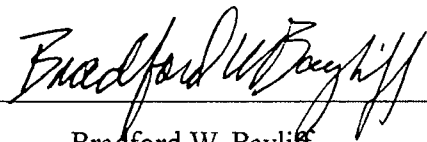
The parties stipulated and agreed the project is necessary and no party advocates that the Commission should deny the Oncor/AEP CCN application. For the reasons discussed in this brief, Route 325 Modified is the best alternative route. The Commission should approve Concho's requested modifications and give the Applicants post-approval flexibility to accommodate oil and gas-related engineering constraints on properties for which the primary that have no habitable structures and are primarily used for mineral development.

RELIEF SOUGHT

Intervenor COG Operating LLC prays the administrative law judges recommend, and the Commission approve, Route 325 Modified, modifications Concho requests, and post-approval flexibility to allow the Applicants to accommodate oil and gas development engineering constraints.

CERTIFICATE OF SERVICE

I certify that on this the 5th day of March, 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Commission's electronic filing system. Parties may access this filing through the Commission's electronic filing system.



Bradford W. Bayliff

APPENDIX

Legal Standard to Approve a CCN Application

PURA and the Commission's substantive rules list the requirements for approving an application for a certificate of convenience and necessity and for approving a route for a proposed transmission line. "To approve an application to obtain or amend a CCN, the PUC [the Commission] must find that the proposed CCN is necessary for the service, accommodation, convenience, or safety of the public."⁷²

I. PURA §37.056(c)

The following factors are to be considered by the Commission in determining whether to approve a CCN application:

- (1) the adequacy of existing service;
- (2) the need for additional service;
- (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
- (4) other factors, such as:
 - (A) community values;
 - (B) recreational and park areas;
 - (C) historical and aesthetic values;
 - (D) environmental integrity;
 - (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
 - (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) [relating to renewable energy] of this title.

⁷² Appendix 1. PURA § 37.056(c).

II. 16 Tex. Admin. Code § 25.101 (b)(3)(B)

With regard to the factors that are to be considered by the Commission for routing a proposed transmission line, the Commission's substantive rules state:

(B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

- (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel existing compatible rights-of-way;
- (iii) whether the routes parallel property lines or other natural or cultural features; and
- (iv) whether the routes conform with the policy of prudent avoidance.

III. Order of referral

PUC DOCKET NO. 48785
SOAH DOCKET NO. 473-19-1265

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FILING OFFICE

JOINT APPLICATION OF ONCOR §
ELECTRIC DELIVERY COMPANY, §
LLC AND AEP TEXAS, INC. TO §
AMEND CERTIFICATES OF §
CONVENIENCE AND NECESSITY §
FOR A DOUBLE CIRCUIT 345-KV §
TRANSMISSION LINE IN PECOS, §
REEVES, AND WARD COUNTIES §
(SAND LAKE – SOLSTICE CCN) §

PUBLIC UTILITY COMMISSION
OF TEXAS

**ORDER OF REFERRAL
AND PRELIMINARY ORDER**

On November 7, 2018, Oncor Electric Delivery Company, LLC and AEP Texas, Inc. filed a joint application with the Public Utility Commission of Texas to amend their respective certificates of convenience and necessity (CCN) for a 345-kilovolt (kV) transmission line in Pecos, Reeves, and Ward counties (Sand Lake – Solstice CCN).

The Commission refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary in the event one or more issues are contested by the parties. The Commission has delegated authority to Commission Advising and Docket Management to issue this preliminary order, which is required under Texas Government Code § 2003.049(e).

All subsequent pleadings in this docket must contain both the SOAH and PUC docket numbers to allow for efficient processing. Parties shall make filings in accordance with 16 Texas Administrative Code (TAC) § 22.71(c) regarding the number of copies to be filed or 16 TAC § 22.71(d)(1)(C) regarding the number of confidential items to be provided. In addition, if any party has filed confidential material before referral of this matter to SOAH, that party must provide a copy of each such confidential filing to the SOAH ALJ assigned to this matter, if ordered.

I. Procedural History

The proposed project is designated as the Sand Lake – Solstice 345-kV Transmission Line Project. The proposed transmission line project is a new 345-kV double-circuit transmission line connecting Oncor Electric Delivery Company, LLC's Sand Lake Switch, located approximately 6 miles northeast of the city of Pecos on the northwest side of farm-to-market road 3398 in Ward County to the AEP Texas, Inc.'s Solstice Switch located along the north side of interstate highway 10, approximately 2.5 miles east of the Pecos and Reeves county line in Pecos County. The proposed transmission line project includes the 345-kV additions to Oncor's Sand Lake Switch station and to AEP Texas, Inc.'s Solstice Switch station. The total estimated cost for the project ranges from approximately \$292.5 million to \$501 million. The proposed project is presented with 408 alternative routes ranging from approximately 44.5 miles to approximately 58.7 miles.

Any route presented in the application could, however, be approved by the Commission. Any combination of routes or route links could also be approved by the Commission.

The Electric Reliability Council of Texas (ERCOT) has deemed this transmission line as critical to the reliability of the ERCOT system.

Oncor Electric Delivery Company, LLC and AEP Texas, Inc. held a public participation meeting on August 15, 2018, from 4:00 p.m. to 7:00 p.m. at the Reeves County Civic Center in Pecos, Texas. Oncor, on behalf of itself and AEP Texas, Inc. (a) mailed a total of approximately 775 individual written notices of the meeting to all owners of property within 500 feet of the centerline of the preliminary alternative route links for the proposed transmission line project; (b) provided newspaper publication in *The Fort Stockton Pioneer*, *Monahans News*, and *Pecos Enterprise* announcing the location, time, and purpose of the public participation meeting; and (c) provided notice of the public participation meeting to the Department of Defense Siting Clearinghouse.

A motion to intervene filed by LCRA Transmission Services Corporation on November 7, 2018, has not been ruled on.

II. Deadline for Decision

Under 16 TAC § 25.101(b)(3)(D), the Commission shall consider any application for transmission lines that are designated by ERCOT as critical to the reliability of the ERCOT system on an expedited basis. The Commission shall render a decision approving or denying any such application for a CCN within 180 days of the date of filing a complete CCN application, unless good cause is demonstrated for extending such a period. Therefore, a Commission decision must be issued by May 6, 2019.

III. Conditional Approval

If the Commission determines that it should approve this application and grant the amendment to Oncor Electric Delivery Company, LLC and AEP Texas, Inc.'s respective CCNs, the Commission will limit the authority granted in the order. The authority granted by the order will be limited to a period of seven years from the date the order is signed unless, before that time, the transmission line is commercially energized. It is reasonable, appropriate, and in the public interest for a CCN order not to be valid indefinitely because it is issued based on the facts known at the time of issuance. The Commission may extend the seven-year time period if the applicant shows good cause. However, Issue 8 below under the issues to be addressed allows the parties to demonstrate that the circumstances of this line are such that the above condition should be changed (e.g., a longer period of time may be more appropriate).

IV. Issues to be Addressed

Under Texas Government Code § 2003.049(e), the Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to the SOAH. The Commission identifies the following issues that must be addressed in this docket:

Application

1. Is Oncor Electric Delivery Company, LLC and AEP Texas, Inc.'s application to amend their respective CCNs adequate? Does the application contain an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation? In answering this question, consideration must be given to the number of proposed alternatives, the locations of the

proposed transmission line, and any associated proposed facilities that influence the location of the line. Consideration may also be given to the facts and circumstances specific to the geographic area under consideration, and to any analysis and reasoned justification presented for a limited number of alternative routes.¹ A limited number of alternative routes is not in itself a sufficient basis for finding an application inadequate when the facts and circumstances or a reasoned justification demonstrates a reasonable basis for presenting a limited number of alternatives. If an adequate number of routes is not presented in the application, the ALJ shall allow Oncor Electric Delivery Company, LLC and AEP Texas, Inc. to amend the application and to provide proper notice to affected landowners; if Oncor Electric Delivery Company, LLC and AEP Texas, Inc. choose not to amend the application, the ALJ may dismiss the case without prejudice.

Need

2. Are the proposed facilities necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA² § 37.056(a) taking into account the factors set out in PURA § 37.056(c)? In addition,
 - a) How does the proposed facility support the reliability and adequacy of the interconnected transmission system?
 - b) Does the proposed facility facilitate robust wholesale competition?
 - c) What recommendation, if any, has an independent organization, as defined in PURA § 39.151, made regarding the proposed facility?
 - d) Is the proposed facility needed to interconnect a new transmission service customer?
3. Is the transmission project the better option to meet this need when compared to employing distribution facilities? If Oncor Electric Delivery Company, LLC and AEP Texas, Inc. is

¹ See *Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, Docket No. 32070, Order on Appeal of Order No. 8 at 6 (Nov. 1, 2006).

² Public Utility Regulatory Act, Tex. Util. Code. §§ 11.013–66.016 (PURA).

not subject to the unbundling requirements of PURA § 39.051, is the project the better option to meet the need when compared to a combination of distributed generation and energy efficiency?

Route

4. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B)?
5. Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?
6. If alternative routes or facility configurations are considered due to individual landowner preference:
 - a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations?
 - a) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?

Texas Parks and Wildlife Department

7. On or after September 1, 2009, did the Texas Parks and Wildlife Department provide any recommendations or informational comments regarding this application pursuant to Section 12.0011(b) of the Texas Parks and Wildlife Code? If so, please address the following issues:
 - a) What modifications, if any, should be made to the proposed project as a result of any recommendations or comments?
 - b) What conditions or limitations, if any, should be included in the final order in this docket as a result of any recommendations or comments?
 - c) What other disposition, if any, should be made of any recommendations or comments?
 - d) If any recommendation or comment should not be incorporated in this project or the final order, or should not be acted upon, or is otherwise inappropriate or

incorrect in light of the specific facts and circumstances presented by this application or the law applicable to contested cases, please explain why that is the case.

Other Issues

8. Are the circumstances for this line such that the seven-year limit discussed in section III of this order should be changed?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

V. Issue Not To Be Addressed

The following issue should not be addressed in this proceeding for the reasons stated:

1. What is the appropriate compensation for right-of-way or condemnation of property?

The Commission does not have the authority to adjudicate or set the amount of compensation for rights-of-way or for condemnation.

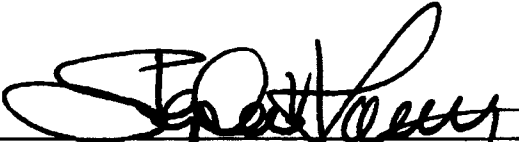
VI. Effect of Preliminary Order

The Commission's discussion and conclusions in this order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The

Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 14th day of November 2018.

PUBLIC UTILITY COMMISSION OF TEXAS



STEPHEN JOURNEAY, DIRECTOR
COMMISSION ADVISING AND DOCKET MANAGEMENT

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